

(Un-)Precedented?

The relevance of the Urgenda case to the Children vs. Climate Crisis Communication

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The [communication](#) brought by sixteen children before the Committee on the Rights of the Child to address the effects of states' inaction on climate change seems at first glance unprecedented and foreign to our common ideas about international environmental law. Yet, as the *Urgenda* case shows, a rights-based approach to climate change is not wholly unheard of.

Individual communications to the Committee on the Rights of the Child

The fact that 196 states are now parties to the Convention on the Rights of the Child can be regarded as an expression of respect for children's concerns at an international level. To represent this mandate, The Third Optional Protocol to the Convention on the Rights of the Child, introduced in 2014, opens the way for an individual application to the Committee on the Rights of the Child (CRC). Currently, [46 states](#) are parties to this protocol.

So far, the work of the Committee has been considerable. Relative to other treaty bodies, it is the fastest decision-making body with an average of two years per decision and has so far concluded proceedings on a total of [22 communications](#). Communications for which the Committee has found a violation by the state in question were mostly based on Article 3 of the [Convention](#) ([best interests of the child](#)), [protection of the child's identity](#) (Article 8) and the [right of the child to express her/his views freely in all matters concerning her/him](#) (Article 12).

The Climate Change Communication

[Sixteen children](#) have now filed a [communication](#) against five countries, namely Argentina, Brazil, France, Germany, and Turkey, on the grounds that they are not taking adequate steps to fight against climate change and are therefore in violation of Articles 3 (best interests of the child), 6 (right to life), 24 (right to health) and 30 (for children belonging to a minority or indigenous communities, right to profess and practice their culture) of the Convention. Authors [request](#) from the Committee to find that

each respondent, along with other states, has caused and is perpetuating the climate crisis by knowingly acting in disregard of the available scientific evidence regarding the measures needed to prevent and mitigate climate change and by recklessly perpetuating life-threatening climate change.

They argue that States should be protecting the rights of petitioners and taking the best interests of the child into account, particularly in allocating costs and burdens to mitigate and adapt to climate change. Therefore, they suggest that States should amend national and sub-national laws and policies to ensure that mitigation and adaptation efforts are accelerated to the maximum extent.

In terms of responsibilities of States, they say:

Cumulative sum of the respondents' historical emissions show that they are major emitters, responsible for a significant share of today's concentration of GHG [Greenhouse Gas Emissions] in the atmosphere. Each of the respondents ranks in the top 50 historical emitters since 1850, based on fossil fuel emissions: Germany ranks 5th, France 8th, Brazil 22nd, Argentina 29th, and Turkey 31st.

As one of the authors of the communication, Greta Thunberg [explains](#) why they directed their complaints against these 5 countries:

This isn't about just 5 nations. They were named since they are the highest emitters that have ratified the [author's note: Optional Protocol on a Communications procedure of the] UN Convention of the Rights of the Child, on which the complaint is built. China, USA, Saudi Arabia, Russia etc. haven't.

The *Urgenda* Precedent

In the context of human rights violations, in recent years, climate change has been brought to justice in a rights-based way all over the world. As of [May 2019](#), apart from the abovementioned communication, we can see this practice in at least 28 countries. In addition, cases have also been brought to the [Court of Justice of the European Union](#), [the Inter-American Court on Human Rights](#), [the Inter-American Commission on Human Rights](#) and the [UN Human Rights Committee](#).

So far, the *Urgenda* [decision](#) of the Hague Court of Appeal of October 2018 (upheld the 2015 decision of the Hague District Court) is a cornerstone of the rights-based approach to climate change and a rare success. Although the decision is not final, Deputy Procurator General Langemeijer and Advocate General Wissink [have advised](#) the Dutch Supreme Court to uphold this decision.

It all started in 2012 when *Urgenda* requested the State to commit and undertake to reduce CO2 emissions ([see](#) para. 2.6 of The Hague District Court decision). The main subject of the complaint is the inadequacy of the state against climate change and the state's inertia about climate change. The objections raised by the Netherlands before the Court will very likely be raised by the five states in front of the CRC. That is why this case is so important: the logic of the verdict could be applied by the CRC.

Causation is a complex issue in terms of State policies and climate change (see on this also [Evangelidis on this blog](#)). In *Urgenda*, although the government argued that

causation could not be proved, the Dutch court denied this objection. The court took the stand that the causal link was not a deciding element since plaintiffs did not seek compensation ([para. 64](#)). As regards the communication to the CRC, the extent to which the concrete states' inaction has led to climate change and how their trans-border activities have victimized the authors will certainly be discussed. However, since here, as in the *Urgenda* case, the authors do not request compensation, the Committee may accept a weak causal link.

The Dutch state stressed in *Urgenda* that climate change is a global problem. Therefore, it was emphasized that the Netherlands could not solve this problem on its own. The Court acknowledged the necessity of global cooperation but argued that this argument would not relieve the State of its obligation to take appropriate action on its territory ([para. 62](#)). As a matter of fact, when it is accepted that there is an application related to human rights, it is evident that the authors have positive and negative obligations under the right to life. Taking measures to prevent future violations is an inherent part of these obligations ([para. 41](#)). The claim of uncertainty, which questions the seriousness of climate change and has been put forward by the Dutch state, is also met by the Court in accordance with the precautionary principle: In the event of a reasonable, real and imminent threat, a duty of care arises. This point is also made in the children's communication ([para. 42](#)).

Applying *Urgenda* on the CRC Communication

In the communication, the authors also argue that the violations are not solely caused by the concerned states' own policies but that failure to meet their obligations of cooperation constitutes a violation in itself ([para. 184-188](#)). In this respect, it is pointed out that the devastating consequences of the activities implemented by the relevant states in their countries affect all humanity and that children are more severely affected by these activities due to their particular characteristics such as smaller lungs and more rapid breathing rate ([para. 114](#)). Although it could be argued that it is not possible to know precisely how these activities of states influence individuals, the role of states in climate change can be determined much more clearly with the developments in science.

The Netherlands saw the court's decision on a policy that has not become law contrary to the principle of separation of powers. The authority to make the necessary policy choices lay not with the courts but with the democratically legitimated government ([para. 67](#)). This claim was rejected because the state had violated human rights by not taking the necessary measures. Finally, the court decided that

it is appropriate to speak of a real threat of dangerous climate change, resulting in the serious risk that the current generation of citizens will be confronted with the loss of life/or a disruption of family life. In this context, The State failed to fulfill its duty of care under the European Convention "by not wanting to reduce emissions by at least 25% by end-2020.

Conclusion

The UN Human Rights Committee [states that](#)

Environmental degradation, climate change, and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life.

The denials and/or the inaction of world leaders with respect to climate crisis have brought the issues to the field of law: By taking legal actions, members of civil society stress the responsibilities of states regarding the effects of the climate. Although it is difficult for now to monitor the effectiveness of the litigations, the law has begun to provide much more positive answers in this area (see [new draft Business and Human Rights treaty](#), [Philippines Human Rights Commission to investigate the Carbon Majors' responsibility](#), Supreme Court [decision](#) regarding accountability of international organizations, etc.). Therefore, with recent developments, it can be said that a rights-based approach to the climate crisis could increase accountability.

Although there are serious reservations that the *Children vs. Climate Crisis* communication might not be admissible especially due to the failure to exhaust domestic remedies (see [Gerbig on this blog](#) regarding the procedural questions of the communication) and the inability to prove a causal link to states' activities, the Committee may surprise us with the development of case-law and an evaluation of the *Urgenda* case. With the insistence of the world on climate justice, international law should be prepared for the larger roles it will play in shaping the world.

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